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April 10, 1998

BY HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re:


In the Matter of Amendment of Section 73.202(b), Table of Allotments FM Broadcast Stations Tylertown, Mississippi
MM Docket No. 97-45; RM-8961

Dear Ms. Salas:

Transmitted herewith on behalf of TRL Broadcasting Company are an original and four (4) copies of its "Reply to Opposition to Motion for Leave to File Response" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,


Henry E. Crawford
Counsel for
TRL Broadcasting Company

cc: The Chief, Allocations Branch

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

MM Docket No. 97-45

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Tylertown, Mississippi

RM-8961

To: The Chief, Allocations Branch

REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE RESPONSE

TRL Broadcasting Company ("TRL Broadcasting"), by counsel, pursuant to 47 CFR §1.45(b) hereby submits its *Reply to Opposition to Motion for Leave to File Response* in response to the *Opposition to Motion for Leave to File Response* ("Opposition") filed by Guaranty Broadcasting Corporation ("Guaranty") in the above-captioned matter on April 9, 1998. In support thereof TRL Broadcasting states as follows:

I. ARGUMENT

1. The Opposition makes clear that Guaranty seeks to prevail in this proceeding through gamesmanship rather than on the merits. As stated in the underlying motion, counsel for TRL Broadcasting never received a copy of Guaranty's Petition for Reconsideration and Motion for Stay. TRL Broadcasting further pointed out that Guaranty had previously failed to serve it with a similar document in another proceeding.¹ Guaranty does not deny this failure of service.

¹ Motion for Leave to File Response to Petition for Reconsideration and Motion for Stay, p. 2, ¶2.

2. Despite other avenues of notice, Section 1.420(f) establishes the primary means of notice as service of the petition on parties to the proceeding. In the present case, as in the previous instance, Guaranty, for whatever reason, failed to complete service of the document on undersigned counsel. Although Guaranty offers the declaration of a legal secretary who reiterates the certificate of service made in connection with the present incident,² Guaranty has no other proof that service was actually accomplished (e.g., postage logs, address database information or mail receipts of any sort). This is so despite the fact that the record already shows that Guaranty had once before failed to serve counsel. On the other hand, undersigned counsel is a solo law practitioner who reviews every single piece of mail received at his firm on a daily basis. The Petition, like the previous document, was never received at undersigned counsel's firm.

3. Undersigned counsel's surprise at discovering the Petition was not feigned. While it is true that Guaranty's counsel had stated an intention to file a Petition during a telephone conversation, when the document was not forthcoming, undersigned counsel had assumed that Guaranty had changed its mind. After all, there could be no defense to the fact that its one-step upgrade application was contingent and, hence, unacceptable. That left only the empty character attacks that were found to be, and are, entirely irrelevant to this proceeding. Surely, there was no basis for a non-frivolous Petition.

4. Guaranty's argument is on a par with its argument that the "Motion to Stay" contained in the Petition, was really just a 'belief' that:

² Declaration of Cheryl Petersen, attached to the Opposition as Exhibit A.

...the Tylertown allotment was already effectively stayed....

Opposition, p. 2, n. 2. This 'belief' is now offered up in defense of the fact that, as Guaranty well knows, it clearly violated Section 1.44(e) of the Commission's rules by including the stay request in the Petition. In truth, Guaranty's Petition contains an entire section styled:

THE EFFECTIVENESS OF THE ALLOTMENT MUST
BE STAYED PENDING RESOLUTION OF THE
SERIOUS ISSUES RAISED HEREIN

Opposition, Section V (emphasis supplied). Indeed, the caption of the Petition reads: "Petition for Reconsideration and Motion for Stay." To argue now that it does not violate Section 1.44(e) of the Commission's rules is as disingenuous and misguided as the rest of the Opposition.

5. There is no countervailing interest in excluding TRL Broadcasting from the proceeding. As Guaranty readily concedes, the Commission cannot accept applications for Tylertown until after the current freeze is lifted. Guaranty has not, and cannot, claim prejudice by affording TRL Broadcasting the opportunity to file a response. Where there has been a lack of service on a party, the Commission will seek out a fair and just resolution. Richard Wilmshurst, 8 FCC Rcd 2734, 2735 (1993) (reply comments accepted in interests of justice and fairness where party did not become aware of comments in time to make a timely response as the result of failure of service); Sherry Rullman, 8 FCC Rcd 4012, 4013 (1993) (application for review dismissed where parties were not served and, hence, were denied notice). In the instant case, the public interest will best be served by establishing a complete record and allowing TRL

Broadcasting the opportunity to address the charges raised by Guaranty in the Petition.

II. REQUEST FOR ADDITIONAL TIME TO RESPOND

6. Counsel for TRL Broadcasting has only learned within the last 48 hours that all of the principals with knowledge of the facts raised by Guaranty in the Petition are out of the country and will not return to the U.S. until the first week of May, 1998. These individuals must be interviewed and statements taken in order to refute the claims made by Guaranty. In the interest of a more complete record and a thorough resolution of the matters contained in this proceeding, TRL Broadcasting requests a further extension of time until Friday, May 8, 1998, to file its response.

III. CONCLUSION

7. Guaranty's Petition fails to address the merits of the Commission's decision that its one-step upgrade was unacceptable because it was contingent. Instead, the Petition seeks to engage in an irrelevant mudslinging brawl. Now, Guaranty seeks to silence any opposition to its allegations. The plain truth is that, for whatever reason, Guaranty has been unable to successfully serve documents on undersigned counsel on two separate occasions. This failure of service should not stand in the way of developing a complete record in this case.

WHEREFORE, in accordance with the above, TRL Broadcasting Company reiterates its request that it be allowed to file a response to Guaranty Broadcasting Corporation's Petition for Reconsideration and Motion for Stay and

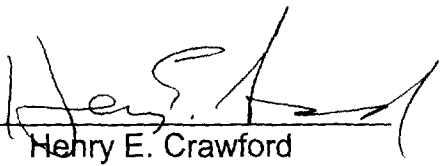
further requests that it be given an extension of time until Friday, May 8, 1998 to do so.

April 10, 1998

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Respectfully Submitted,

TRL Broadcasting Company

By: 
Henry E. Crawford

Its Attorney

CERTIFICATE OF SERVICE


I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply to Opposition to Motion for Leave to File Response have been served by United States mail, postage prepaid this 10th day of April, 1998 upon the following:

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*Hand Delivered


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